Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	
Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands.	**CC Docket No. 92-166**

CONSOLIDATED COMMENTS TO THE PETITIONS FOR PARTIAL RECONSIDERATION AND CLARIFICATION

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Summary

Motorola Satellite Communications, Inc. ("Motorola") submits these consolidated comments in response to the petitions for partial reconsideration and clarification submitted by several "Big LEO" Mobile Satellite Service ("MSS") applicants in the above-captioned proceeding. Although Motorola generally supports the Commission's new rules and policies that were adopted in the Report and Order in this proceeding, there are several areas which warrant reconsideration and/or clarification. Many of Motorola's positions are supported by the other applicants in their respective petitions. First, Motorola and LQP have pointed out that the Commission did not sufficiently demonstrate a need for an interim spectrum plan to protect GLONASS receivers in the United States. Second, Motorola has urged the Commission to reconsider its decision not to adopt at this time an out-of-band emissions mask for MSS systems. An out-of-band emissions mask would eliminate the need for an interim spectrum sharing plan and would prevent harmful interference between MSS systems operating in the CDMA and FDMA/TDMA band segments.

Third, the Commission has failed to specifically address the potential dangers of exclusive international access arrangements by MSS licensees. Motorola and TRW have argued that allowing these arrangements to develop is inherently anti-competitive and not in the public interest. Fourth, Motorola, Constellation and LQP have asked for a clarification of the Commission's satellite system replacement rules which, if not

amended, might inhibit Big LEO licensees from applying to construct and operate "next generation" systems on a timely basis.

Finally, Motorola, TRW and Constellation have argued that AMSC Subsidiary Corporation ("AMSC") should not be allowed to amend its geostationary system application to gain access to more MSS spectrum. Providing AMSC with more spectrum now while the Big LEO applicants are awaiting their first system authorizations to share a relatively small amount of spectrum would provide AMSC with an overwhelming competitive advantage in the MSS industry where it already has an exclusive license in the United States for the 1544-1559/1645.5-1660.5 MHz MSS bands.

Motorola, however, cannot support some of the positions of the other applicants. Motorola strongly opposes, for example, AMSC's request for reconsideration of the Commission's non-geostationary qualification rule for this service, which effectively denies geostationary systems access to any portion of the 1.6/2.4 GHz bands. The advantages of non-geostationary satellite systems over geostationary satellite systems for the provision of handheld MSS on a global basis amply warrant that these bands be authorized exclusively for Big LEO systems. The Commission should also deny the requests of TRW to extend its spectrum sharing plan to any area outside of the United States and its territories, and to relax the Commission's strict milestone requirements for MSS systems. Motorola also suggests that the Commission defer consideration of AMSC's remaining requests for reconsideration as premature.

Table of Contents

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Pursuant to Section 1.429(f) of the Commission's Rules, Motorola Satellite Communications, Inc. ("Motorola") hereby files these consolidated comments in response to the petitions for partial reconsideration and clarification submitted by several "Big LEO" Mobile Satellite Service ("MSS") applicants in the above-captioned proceeding. The petitions variously request that the Commission clarify and/or reconsider a number of matters addressed in its Report and Order, 59 Fed. Reg. 53,294 (Oct. 21, 1994). These comments reiterate Motorola's position on matters which it believes should be clarified and/or reconsidered by the Commission, and set forth Motorola's views on the remaining positions of the other petitioners.[1/]

1/ See Public Notice, 59 Fed. Reg. 62,398 (Dec. 5, 1994).

I. INTRODUCTION

A. Motorola's Petition for Reconsideration

Although Motorola generally supports the Commission's new rules and policies that were adopted in the Report and Order, there are several areas which warrant reconsideration and/or clarification. First, Motorola believes that the Commission did not sufficiently demonstrate a need for an interim spectrum plan to protect GLONASS receivers in the United States.[2/] Second, Motorola urges the Commission to reconsider its decision not to adopt an out-of-band emissions mask for MSS systems at this time. An out-of-band emissions mask would eliminate the need for an interim spectrum sharing plan and would prevent harmful interference between MSS systems operating in the CDMA and FDMA/TDMA band segments.[3/]

Third, the Commission has failed to specifically address the potential dangers of exclusive international access arrangements by MSS licensees. Motorola believes that allowing these arrangements to develop is inherently anti-competitive and not in the public interest.[4/] Fourth, Motorola has asked for a clarification of the Commission's satellite system replacement rules which, if not amended, might inhibit Big LEO licensees from

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[2/] See Petition for Clarification and Partial Reconsideration of Motorola, at 6-15 (Nov. 21, 1994) ("Motorola Petition").

[3/] See id., at 9-11, 15-16.

[4/] See id., at 16-18.

applying to construct and operate "next generation" systems on a timely basis.[5/]

Finally, Motorola has argued that AMSC Subsidiary Corporation ("AMSC") should not be allowed to amend its geostationary system application to gain access to more MSS spectrum.[6/] Providing AMSC with more spectrum now while the Big LEO applicants are awaiting their first system authorizations would provide AMSC with an overwhelming competitive advantage in the MSS industry where it already has an exclusive license in the United States for the 1544-1559/1645.5-1660.5 MHz MSS bands.

B. The Other Big LEO Applicants' Petitions

Four of the five other Big LEO applicants also have filed petitions for partial clarification and/or reconsideration of the Commission's Report and Order. In its petition, Constellation Communications, Inc. ("Constellation") seeks to disqualify AMSC from the current MSS licensing proceeding because AMSC has not even launched its geostationary satellite, let alone demonstrated a need for more MSS spectrum. Constellation also seeks reconsideration of the Commission's space station replacement applications and licensing procedures, certain interservice sharing rules, and the earth station licensing policies.[7/]

[5/] See id., at 18-19.

[6/] See id., at 19-23.

[7/] See Petition for Reconsideration of Constellation (Nov. 21, 1994) ("Constellation Petition").

Loral/QUALCOMM Partnership, L.P. ("LQP"), in its petition, advocates reversing the Commission's decision to "consider" authorizing geostationary systems like AMSC to operate in the 1.6/2.4 GHz bands. LQP also argues that the Commission's interim plan for avoiding interference with GLONASS receivers operating in the United States is unnecessary due to the fact that the Russian Federation has agreed to move GLONASS operations down in frequencies, and that the loss of a few GLONASS signals due to MSS operations will not impair global navigation. In addition, LQP seeks clarification of the Commission's rules establishing filing windows for system replacement applications, the rules dealing with "authorized transmissions" from mobile earth stations, and the Commission's rules setting the commencement date for system milestones.[8/]

TRW Inc.'s ("TRW") petition for partial reconsideration and clarification addresses several areas of the Commission's Report and Order. TRW seeks to have the Commission reverse its decision permitting AMSC to amend its application to provide Big LEO services in the available bands. Additionally, TRW seeks to clarify the Commission's rules regarding band sharing between MSS feeder links and fixed-satellite service systems, to alter milestone schedules to accommodate changes in business plans or capacity needs, and to extend the U.S. band sharing plan to North America. Finally, like Motorola, TRW argues that the Commission

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[8/] See Petition for Clarification and Partial Reconsideration of LQP (Nov. 21, 1994) ("LQP Petition").

needs to implement a prohibition on exclusive international arrangements by U.S. MSS systems.[9/]

AMSC predictably seeks reconsideration of the Commission's decision to limit licensing of spectrum in the 1.6/2.4 GHz bands to non-geostationary systems. Second, AMSC seeks a reversal of the Commission's conclusion that there is inadequate capacity in the available spectrum for all six MSS applicants. Lastly, AMSC seeks a clarification of the rights of any applicant that decides to defer making its financial showing by November 16, 1994. In particular, AMSC desires the Commission to condition all initial Big LEO licenses on the ability to share the available spectrum with later qualified licensees.[10/]

C. Motorola's Position on the Pending Petitions

Many of Motorola's positions are supported by the other applicants in their respective petitions. First, LQP agrees that there is no need for an interim plan to protect the Russian GLONASS system from interference by U.S. MSS systems. Specifically, LQP urges the Commission to reconsider its policy of protecting GLONASS receivers in the United States operating above 1606 MHz, and in any event, believes that the Commission should not adopt any interim plan based upon speculation and faulty assumptions.[11/] Second, there is agreement among several

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[9/] See Petition for Partial Reconsideration and Clarification of TRW (Nov. 21, 1994) ("TRW Petition").

[10/] See AMSC Petition for Reconsideration (Nov. 21, 1994) ("AMSC Petition").

[11/] See LQP Petition, at 12-18.

of the applicants that the Commission's new system replacement rules, see 47 C.F.R. § 25.120(e), must be clarified in order to allow for second-generation MSS systems to be implemented in a timely manner.[12/] Third, TRW and Constellation agree with Motorola that AMSC should not have been allowed to amend its system application to apply for a Big LEO MSS system.[13/] Lastly, TRW concurs with Motorola that the Commission should explicitly prohibit exclusive international arrangements which threaten the global and competitive nature of Big LEO MSS service.[14/]

Motorola, however, cannot support some of the positions of the other applicants. Motorola strongly opposes, for example, AMSC's request for reconsideration of the Commission's non-geostationary qualification rule for this service, which effectively denies geostationary systems access to any portion of the 1.6/2.4 GHz bands.[15/] The advantages of non-geostationary satellite systems over geostationary satellite systems for the provision of handheld MSS on a global basis amply warrant that these bands be authorized exclusively for Big LEO systems.[16/]

12/ See LQP Petition, at 19-22; Constellation Petition, at 4-9.

13/ See Constellation Petition, at 2-4; TRW Petition, at 5-8.

14/ See TRW Petition, at 21-23.

15/ See AMSC Petition, at 8-11.

16/ On the other hand, Motorola supports the request of LQP to reconsider the Commission's decision to allow geostationary systems access to the 1.6/2.4 GHz bands on a secondary basis. See LQP Petition, at 3-11. There is no evidence in the record to suggest that AMSC can operate a geostationary system in the CDMA band segment without "affecting" other Big LEO systems.

The Commission should also deny the requests of TRW to extend its spectrum sharing plan to any area outside of the United States and its territories, and to relax the Commission's strict milestone requirements for MSS systems.[17] Lastly, Motorola suggests that the Commission defer consideration of AMSC's remaining requests for reconsideration as premature.[18]

II. MANY OF MOTOROLA'S POSITIONS ARE SUPPORTED BY THE OTHER APPLICANTS

A. LQP Agrees That There Is No Need For An Interim Plan To Protect GLONASS

In its petition, Motorola asserted that the Commission's interim plan for avoiding interference between MSS systems and GLONASS operations in the United States is neither warranted nor supported by the record in this proceeding. As Motorola noted, it is not clear that the Russian GLONASS system will be used in conjunction with Global Positioning Service ("GPS") in the United States to provide precision approaches and landings. In fact, the record supports the conclusion that GLONASS will not be used for such purposes.[19] At a minimum, the Commission should defer any decision to implement an interim plan unless or until GLONASS is affirmatively certified into the Federal Radionavigation Plan to provide precision approaches.

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[17] See TRW Petition, at 4-5, 19-21.

[18] See AMSC Petition, at 11-14.

[19] See Comments of Motorola Satellite Communications, Inc., at 42-44 and Appendix 8 (May 5, 1994).

As one of the leading proponents of CDMA technology, it is significant that LQP does not support the Commission's decision to adopt an interim band sharing plan to protect the Russian GLONASS system. Motorola fully supports the additional reasons provided by LQP for not adopting an interim band sharing plan, including its analysis of the political implications of considering such a plan and the unlikely potential for interference to GLONASS receivers from MSS systems.

Both LQP and Motorola agree that an interim plan is not needed because of the agreement of the Russian Federation to migrate the GLONASS system down in frequencies to below 1606 MHz. The United States has agreed to coordination of only the final carrier frequency configuration of GLONASS, and to "take all practicable steps to reduce mutual interference to an acceptable level," until the final configuration is reached. Thus, it is not practicable to implement any interim plan which seeks to avoid interference with GLONASS receivers.

LQP has also effectively demonstrated that an interim plan would not be needed to use GLONASS receivers in the Global Navigation Satellite System ("GNSS"), and that no interference would be caused by MSS systems to GPS and GLONASS satellites operating below 1606 MHz.[20/] Like Motorola, LQP believes that, at a minimum, the Commission should defer consideration of any interim plan until the RTCA's protection criteria, which would apply to MSS systems for the GLONASS system, are implemented.[21/]

20/ See LQP Petition, at 16.

21/ See id., at 17-18.

Only then can the Commission determine the extent to which the aviation community requires additional protection for GLONASS receivers.

B. LQP And Constellation Agree That the System Replacement Rules Need To Be Clarified

The Report and Order adopts a filing window for system replacement applications which requires that applications "be filed no earlier than three months prior to and no later than one month after the end of the seventh year of the existing license." Report and Order at ¶ 186. Motorola, LQP and Constellation have requested clarification of this inflexible satellite replacement rule.

As written, the replacement window would conflict with the implementation of any second-generation Big LEO MSS system. Implementation of second-generation systems is more likely to occur within a few years after many of these MSS systems begin service, given the 5 to 8 year lives for some non-geostationary satellites. The Commission's new rules could be interpreted to prevent Big LEO licensees from seeking authorization to construct, launch and operate "next generation" systems which would incorporate advances in satellite design, and additional spectrum assignments to meet demand requirements. As LQP points out, a particular interpretation of the replacement rules could require licensees to "replace their original satellites with 'technically identical' satellites to avoid a hiatus in

service."[22/] Such a replacement policy is not in the public interest since it would inhibit technological advancement from promptly reaching the public.

Accordingly, the Commission should clarify its rules to provide for the filing of "next generation" satellite systems at any time.

C. TRW And Constellation Agree That AMSC Should Not Have Been Allowed To Amend Its System Application

In its Report and Order, the Commission allowed AMSC to amend its system application to seek spectrum in the 1610-1626.5/2483.5-2500 MHz frequency bands for a Big LEO system. In their petitions, Motorola, TRW and Constellation all advocate eliminating AMSC as an applicant for these bands. Allowing AMSC to amend its application in order to seek more MSS spectrum in these bands would exacerbate an already critical shortage of global spectrum for Big LEO MSS systems, and would unnecessarily extend AMSC's current monopoly over U.S. MSS spectrum. AMSC already has a substantial head start in the United States for cultivating an MSS customer base. It has indicated on numerous occasions that it intends to initiate service next year, whereas the Big LEO applicants are several years away. Clearly, such a result would not be in the public interest.

As Motorola noted in its petition, the Commission has the authority to disqualify an applicant on competitive

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22/ See LQP Petition, at 20.

grounds.[23/] Similarly, Constellation argues that allowing AMSC to amend its application would be anti-competitive and contrary to the Commission's past rulings which have prohibited spectrum warehousing, and which have set limits on the amount of additional spectrum a satellite licensee can request.[24/]

Moreover, as TRW has pointed out, AMSC's proposed LEO system is entirely inconsistent with its stated need for more spectrum.[25/] AMSC has claimed that its 30 MHz of authorized MSS spectrum is not sufficient to serve its projected customer base for services provided over a geostationary system. Even if this claim were true, however, an authorization of spectrum in the 1610-1626.5 MHz band is inconsistent with AMSC's proposed LEO system, because spectrum authorized to AMSC for this system would not eliminate the purported shortfall for its geostationary satellite system.

D. TRW Agrees That the Commission Should Prohibit Exclusive International Arrangements

The Commission failed to address the need to prohibit exclusive international arrangements which would prevent U.S. MSS systems from providing service in a foreign country. In a joint proposal by four of the Big LEO applicants, it was agreed that the Commission should prohibit such exclusive anti-competitive

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23/ See Motorola Petition, at 21.

24/ See Constellation Petition, at 3.

25/ See TRW Petition, at 7.

agreements.[26] Clearly, these arrangements would be inconsistent with the Commission's policies relating to international satellite and cable landing licenses. See, e.g., 47 U.S.C. § 35 (1988); Orion Satellite Corp., 5 FCC Rcd. 4937, 4942 (1990); Optel Communications, Inc., 8 FCC Rcd. 2267, 2272 (1993); American Telephone and Telegraph Company, et al., 7 FCC Rcd. 130, 132-33 (1992); Transgulf Communications Ltd., Inc., 6 FCC Rcd. 2335, 2337 (1991).

Like Motorola, TRW urges the Commission to explicitly prohibit exclusive international access arrangements. Allowing exclusive international arrangements has the potential for inhibiting the development of Big LEO MSS systems which require licenses worldwide to provide truly global service. Additionally, TRW notes that the failure to prohibit these arrangements could result in unnecessary costs and delays, since it "would guarantee interminable rounds of negotiations, disputes and litigation as 1.6/2.4 GHz MSS licensees vie for favor abroad, and as foreign entities and administrations seek to further their own interests by playing the licensees off one another to the ultimate detriment of U.S. ratepayers."[27]

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[26] See Joint Proposal and Supplemental Comments, at 7-8 (Sept. 9, 1994) ("Joint Proposal").

[27] See TRW Petition, at 21-23.

III. MOTOROLA SUPPORTS SOME OF THE POSITIONS TAKEN BY THE OTHER APPLICANTS IN THEIR PETITIONS

A. Constellation's and TRW's Request for Clarification of the Earth Station Licensing Rules

Motorola agrees with TRW and Constellation that the Commission should modify its earth terminal rules to eliminate their confusing reference to "space stations." Specifically, new Section 25.203(k) inappropriately imposes requirements upon space stations that are already contained in Section 25.278 as a coordination requirement and that are inconsistent with the conclusions of the Negotiated Rulemaking Committee.[28/]

B. LQP's Request To Reconsider The Decision To Allow Geostationary Systems Potential Access to Authorized Big Leo Frequency Bands

As previously indicated, Motorola agrees with LQP's assertion that "[a]uthorizing a GSO system would significantly undermine the Commission's decision to adopt LEO technology" which has the "advantages of avoiding signal delay inherent in GSO systems and providing greater coverage capabilities."[29/] The possibility of a geostationary system in the 1.6/2.4 GHz bands is inconsistent with the Commission's goal of providing

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28/ Id. The Commission's rule requires demonstration and certification requirements on an applicant for a "nongeostationary 1.6/2.4 GHz Mobile-Satellite Service space or earth station that will operate with a geostationary or non-geostationary system in a frequency band in which a non-geostationary system is or is proposed to be licensed for feeder links." TRW Petition, at 18 (emphasis omitted); see also Constellation Petition, at 9-10.

29/ LQP Petition, at 6.

global MSS service to handheld terminals. It is not possible, as LQP correctly observes, for the Commission to achieve all of the benefits associated with Big LEO systems while at the same time trying to promote both geostationary and LEO systems in the same band.[30/] Accordingly, the Commission should reconsider its decision to allow geostationary systems access to the Big LEO frequency bands, even if on a secondary basis.

IV. MOTOROLA STRONGLY OPPOSES SEVERAL SPECIFIC REQUESTS FOR RECONSIDERATION BY THE OTHER BIG LEO APPLICANTS

A. AMSC's Request For Reconsideration of the Non-geostationary Satellite Rule

Motorola strongly opposes AMSC's request for reconsideration of the Commission's decision to deny geostationary systems access to the 1.6/2.4 GHz bands on a primary basis. AMSC asserts that the Commission failed to fully explain the claimed advantages of LEO systems over GSO MSS systems and that LEO satellites are not novel. AMSC has described these advantages as mere "fallacies."[31/]

AMSC's analysis misses the mark. Although LEO satellites have been utilized before, they have never been used to implement a global mobile satellite service that intends to provide voice and data transmissions to handheld terminals. In this sense, Big LEO systems are being used to provide a novel service to the public.

30/ Id., at 6.

31/ See AMSC Petition, at 8.

AMSC also claims that GSO systems are able to provide "coverage everywhere that the Commission requires and can do so more efficiently and with fewer outages than non-GSO systems."[32/] As Motorola has argued previously, however, these claims are substantially exaggerated since simple geometry dictates that a significant part of the world will always be beyond the reach of a GSO system.[33/] More realistically, AMSC's planned GSO system would serve, at most, the United States and surrounding areas.[34/] This service coverage is substantially less than the global coverage capabilities of the Big LEO MSS systems.

Finally, AMSC erroneously attacks the ability of non-GSO MSS systems to provide adequate service quality to small handheld units.[35/] AMSC claims that the Commission ignored AMSC's evidence which purportedly demonstrates that small handheld units serviced by Big LEO MSS systems "will not penetrate walls and will require the user essentially to stand in an open field for uninterrupted communications."[36/] AMSC

32/ See AMSC's Petition, at 9.

33/ See Motorola's Reply Comments, at 3 (June 20, 1994).

34/ In an attempt to demonstrate the global ability of GSO systems, AMSC cites the fact that a recent Arctic expedition travelling far north was able to communicate using an INMARSAT GSO satellite. This example does not rebut the Commission's general finding that Big LEO systems will maintain a coverage advantage over GSO systems. Moreover, even AMSC would not dispute that INMARSAT cannot provide service to handheld terminals.

35/ See AMSC's Petition, at 9.

36/ Id.

ignores, however, Motorola's previous rebuttal of this claim which conclusively demonstrated that the IRIDIUM™ system will provide high quality, uninterrupted voice and data services in virtually all environments, including shadowed areas.[37/] Even AMSC has acknowledged the capabilities of the IRIDIUM system by stating that it "exhibits the capability for adequate power to serve handheld terminals in many areas," and that it "appears capable of providing an 18 dB margin . . . for service to vehicles or more favorably located handheld terminals."[38/] The Commission appropriately rejected AMSC's arguments in its Report and Order, and it should do so now.

B. TRW's Request For An Extension of the Commission's Spectrum Sharing Plan Outside Of U.S. Territories

Recognizing potential problems in providing global service if each Big LEO licensee is unable to obtain spectrum in other countries, TRW requests that the Commission "undertake coordination efforts to extend the U.S. spectrum sharing plan throughout North America, i.e., Canada, Mexico, and the Caribbean basin."[39/] Motorola can no longer support this request.[40/]

37/ See Motorola Reply Comments, at 14 (June 24, 1994).

38/ See Technical Appendix to AMSC Comments, at 1, 2.

39/ See TRW's Petition, at 5.

40/ In its joint proposal, Motorola accepted a North American band segmentation plan based upon the U.S. plan in exchange for agreement by the three other parties that TDMA/FDMA systems would have access to more spectrum in the rest of the world. See Joint Proposal, at 7-8. It would be fundamentally unfair for the Commission to accept TRW's attempt to "cherry pick" this aspect of the joint proposal.

Motorola is willing to accept the Commission's decision not to interfere in any international coordination efforts by attempting to impose its spectrum sharing plan on other nations. Such an effort might not only offend the sovereignty of other nations, but it could also be counterproductive to producing global MSS service. To implement TRW's request would go against the Commission's decision to simply "work with the global community to promote mobile satellite services through the development of sharing techniques," but ultimately to leave the "implementation of Big LEO service. . . within that country's jurisdiction and control." Report and Order at ¶ 211. Moreover, Motorola's spectrum requirements will be different in other countries, making the Commission's spectrum sharing plan inappropriate for those countries.

C. TRW's Request To Relax the Milestone Requirements

TRW requests that the Commission consider allowing its milestone requirements for service to "be made more flexible once system implementation has commenced and a licensee has begun to offer service."[41/] Specifically, TRW argues that the Big LEO MSS licensees should be allowed "to request postponement of milestones if they are in substantial compliance with the technical qualifications of the FCC's rules with [its] satellites already in operation."[42/]

41/ See TRW's Petition, at 19.

42/ See id., at 20.

Motorola strongly opposes TRW's request. TRW has suggested that milestone schedules should be flexible enough to "accommodate business plans that may be altered based on initial capacity needs."[43/] Such a flexible standard is excessively vague, and is likely to lead to an avalanche of requests by licensees seeking a delay in the full implementation of their systems. This type of service delay is precisely what the Commission sought to avoid when it decided to impose a strict implementation schedule on all Big LEO licensees.[44/] By licensing Big LEO systems by January 31, 1995, the Commission will be facilitating the early introduction of global MSS, as well as the international coordination process. Milestone extensions, such as the ones suggested by TRW, only serve to delay the implementation of Big LEO services and should not be condoned.

V. THE FCC SHOULD DEFER CONSIDERATION OF SEVERAL OF AMSC'S RECONSIDERATION REQUESTS

AMSC states that the Commission should reconsider its determination that six systems cannot operate in the Big LEO

43/ See TRW Petition, at 20.

44/ In its Report and Order, the Commission already has provided a process for licensees to obtain more time in implementing their service. The Commission states that in limited circumstances it "may authorize a different schedule if an applicant concretely demonstrates that its proposed system's size and/or complexity warrants additional time because of the size or complexity of its proposed system." Report and Order at ¶ 189. To also implement relaxed milestones for licensees, such as TRW, would defeat the strict timing requirements the Commission has established, and contribute to an undesired increase in the number of requests for delays in providing MSS service.

frequency bands. It claims that the Commission has not provided any support for this assertion, and it argues that more than five systems could technically utilize the bands.[45] AMSC further argues that "[t]o license one set of applicants at an earlier date, to the potential prejudice of the one or more of the other applicants, is contrary to the Communications Act and principles of administrative fairness."[46]

Motorola suggests that the Commission either reject these arguments outright or defer their consideration. First, it is likely that over time more information on the technical ability of the CDMA systems to share frequencies will become available to the Commission and the other applicants. Thus, it may be possible for more than four MSS systems to share the CDMA band segment. Second, the entire issue may be rendered moot after the Commission's determination as to which CDMA applicants have satisfied the Commission's qualification requirements. For example, if only two of the five CDMA applicants satisfy the Commission's stringent financial standards, it will not be necessary to determine whether enough spectrum exists for six applicants. Thus, it is quite likely that not all of the licensed systems will be built, resulting in fewer systems sharing the available spectrum.

Lastly, AMSC's "Ashbacker" rights would not be affected if it receives a license at a different time than the other fully

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45/ See AMSC Petition, at 11-13.

46/ See AMSC Petition, at 14 (citing Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945)).

qualified applicants. Such non-simultaneous licensing will be the result of AMSC's own decision to defer making the requisite financial showing, and not because of any action or inaction by the Commission.

VI. CONCLUSION

For the reasons stated herein and in its Petition, Motorola urges the Commission to clarify and reconsider the various issues addressed in these Comments.

Respectfully submitted,

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